

REMARKS

By this response, claims 11, 15, 19, and 22 have been amended, claim 21 has been canceled, and claims 25-28 have been added. Accordingly, claims 11-20 and 22-28 are in the application and subject to examination.

The amendments to claims 11, 15, 19, and 22, and new claims 25-28, are supported by the drawings and by the specification, particularly paragraphs 00014, 00015, and 00016. No new matter has been added.

Applicant appreciates the indication that claims 21 and 22 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claim 19 has been amended to incorporate the subject matter of claim 21, which should place claim 19 in condition for allowance. Claim 21 has been canceled and claim 22 has been amended to depend from claim 19. New claims 26 and 27 depend from amended claim 19. Since claims 20 and 22-27 depend from allowable claim 19, they also should be in condition for allowance.

The examiner has rejected claims 11-14 and 17-18 under 35 U.S.C. § 102(b) as allegedly being anticipated by the newly cited patent to Oliver, U.S. 4,354,486. The examiner also has rejected claims 15-18 under 35 U.S.C. § 103(a) over the patent to Oliver in view of the previously cited patents to Newman, Esposito, and Madden and the newly cited published application of Healy, et al., U.S. Pub. No. 2002/0147091.

Applicant traverses the rejection of claims 11-14 and 17-18 and requests reconsideration.

Unlike claims 11-14 and 17-18, Oliver does not disclose a bag within which a flexible drape of folded sterilizable material is disposed, nor does Oliver disclose that

such a bag and drape are sufficiently long that they extend beyond the side edges of an operating table. Moreover, Oliver does not disclose that such a bag can be opened while a patient is on the operating table and extended to cover the end of the table and a portion of the side edges of the table.

Similarly, the patent to Newman does not disclose a bag and a surgical drape that are sufficiently long that they extend beyond the side edges of an operating table. Newman does not disclose that his package 10 can be opened while a patient is on the operating table and extended to cover the end of the table and a portion of the side edges of the table. Esposito does not disclose a surgical drape, but rather a foldable organizer in the nature of a cardboard box with dividers that has tape strips 58. Madden discloses a surgical drape 10 with leggings 26, but the drape 10 is provided to users in a “folded compact condition.” See FIGS. 1 and 2 and the specification at column 2, lines 56-59.

The newly cited published application of Healy et al. bears no relationship to surgical drapes and containers therefor. In contrast with the present invention, Healy’s perforations 22 are not used to open a bag, but rather to expose a slide zipper seal that is incorporated as part of bag 10. See FIG. 4 and the specification at paragraphs 0023 and 0028.

In order to constitute an anticipation of a claim, a prior art reference must contain a description of each and every element found in the claim, arranged as required by the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). In the present case, the patent to Oliver fails to disclose each and every element of the

claimed invention, arranged as required by the claims, for the reasons noted above. Therefore, the rejection under 35 U.S.C. § 102(b) should be reconsidered and withdrawn.

In order to reject a claim on the ground of obviousness, there must be some evidence to show that a necessary modification of a reference is desirable. In the absence of such evidence, it is improper to make an obviousness rejection. *In re Kahn*, 44 F.3d 977, 986 (Fed. Cir. 2006); M.P.E.P. § 2143.01(I)(2006).

With respect to claims 15-18, there is no evidence of record that would suggest that any of the features of the Newman, Esposito, or Madden devices could or should have been incorporated in the product of Oliver to produce the claimed invention. None of these patents address the problem solved by applicant's invention. Indeed, the patent to Esposito and the published application of Healy et al. do not even relate to the field of surgical drapes.

The examiner has provided no basis why one skilled in the art would find it desirable to pick and choose individual features from a number of divergent products such as those of Oliver, Esposito, and Healy, et al. Moreover, in view of the amendments that have been made to claim 11, there is no combination of the references cited by the examiner that would produce the claimed invention. For these reasons, the rejection of claims 15-18 under 35 U.S.C. § 103(a) should be reconsidered and withdrawn.

CONCLUSION

In view of the foregoing amendments to the claims, and in view of the foregoing remarks, the application now should be in condition for allowance. If the examiner has any questions concerning this matter, he is requested to telephone the undersigned attorney in order to expedite prosecution of the application.

Respectfully submitted,

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